

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
SILLAM, et al., : Docket #21cv6675
: 1:21-cv-06675-CM-OTW
Plaintiff, :
- against - :
LABATON SUCHAROW LLP, : New York, New York
: January 25, 2023
Defendant. :
----- :

PROCEEDINGS BEFORE
THE HONORABLE ONA T. WANG,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 HONORABLE ONA T. WANG (THE COURT): -- under
3 the Federal Rules and the Hague Convention would
4 apply. What does that actually mean and what does
5 that prevent or preclude your clients from doing that
6 matters so much here.

7 MR. MARK ZAUDERER: Sure, and thank you for the
8 opportunity, I'm going to address that specifically --

9 THE COURT: Yes, and you don't have to stand. I
10 know for some lawyers you can't help it, it's like a
11 reflex, but if you're more comfortable sitting down and
12 speaking into the microphone that's fine, too.

13 MR. ZAUDERER: Thank you, and if you'll allow me
14 a few minutes I'll do that directly as well, so, and then
15 I'm going to tell you some things that I think are quite
16 shocking that I've learned.

17 So in terms of the practicalities, one of the
18 suggestions has been made, well, why just, what's the
19 problem, take a remote deposition from here, it's under
20 the Hague Convention. Well if a deposition and, by the
21 way, let me say at the outset, Your Honor, I'm not going
22 to argue the law, this is a discretionary matter, we
23 are entirely in agreement with that although we've
24 noted that the default is you've got a plaintiff who
25 brought a suit here and we've suggested to you there

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2 has to be good reason so that the shoe is on the other
3 foot, so here's addressing that.

4 If we take a deposition here during business
5 hours it's six hours later in France.

6 THE COURT: Yep, no, that's not even where I
7 was going.

8 MR. ZAUDERER: Go ahead.

9 THE COURT: I was going first, first, look,
10 we've talked about the different possibilities, right,
11 I can appreciate in this case that there could be
12 reasons why you might not want to do a remote
13 deposition and why there are challenges, among them
14 the time difference. So I wanted to talk first about
15 -- well I want to just say first that I'm dismayed
16 that we're still arguing about this, but I wanted to
17 talk first about why you cannot do an in person
18 deposition in France because, that's assuming, right,
19 if we're talking about a deposition in person in
20 France that's assuming that plaintiffs have made a
21 case why there is good cause to, to have the
22 depositions proceed in France.

23 MR. ZAUDERER: Okay.

24 THE COURT: I'm not necessarily ruling that
25 plaintiffs have made that showing because one of the

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2 other alternatives I am still considering is, is
3 whether they should be compelled to come to New York
4 or whether there ought to be a remote deposition with
5 them sitting in France to address their concerns.
6 However, the reason why I'm exploring an in person
7 deposition in France in the first instance is because
8 they've been done before, they were done before the
9 pandemic --

10 MR. ZAUDERER: We know that.

11 THE COURT: They've been done, right? If it
12 takes, it takes the issue of plaintiff's inability or
13 unwillingness to travel off the table, right, it takes
14 that factor away. It also takes away your concerns
15 about the time difference, about the possibility that
16 there's other people in the room or other influences
17 or, you know, and, look, I'm old school because I have
18 done remote and video depositions well before the
19 pandemic --

20 MR. ZAUDERER: Judge, may I?

21 THE COURT: (continuing) -- but as the party,
22 as a lawyer taking a deposition --

23 MR. ZAUDERER: Judge --

24 THE COURT: I completely understand why, why
25 an in person deposition and particularly in this case

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2 might be preferable. I'm not yet ruling on either of
3 those, I just want to explore --

4 MR. ZAUDERER: I understand.

5 THE COURT: (continuing) -- the various
6 options here.

7 MR. ZAUDERER: It does not take away the
8 problem, and please indulge me and let me explain it,
9 there are some unusual situations here which I have to
10 have the opportunity to make you aware of, okay?

11 THE COURT: Okay.

12 MR. ZAUDERER: So in this, let's say we were
13 taking it, now we're going to have a brouhaha at the
14 outset, okay, and I'm going to tell you why, and there
15 is going to be an examiner there who is not familiar
16 with things here and we're in a time difference. And I
17 don't know what Your Honor's practice is --

18 THE COURT: Wait, are you still talking about
19 a remote deposition?

20 MR. ZAUDERER: No, in person in France.

21 THE COURT: Okay.

22 MR. ZAUDERER: First of all, I'm going to have
23 to go over there, consider the expense, right, I've
24 got to bring this gentleman with me here with the
25 documents, I have to have French counsel, I have to

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2 hire the videographers over there, the stenographers
3 over there, the translators over there, it's
4 expensive. And we can't just show up, there's only an
5 overnight going to Paris, that's the only way to get
6 there, you can't get there at ten in the morning and
7 then do a deposition. So you're there at least a day
8 and a half in advance, then you've got to take another
9 day wasted, another day, another day.

10 But let me get to the heart of this, which I
11 will, okay? I went over the incognito last week to
12 attend a French proceeding. This is what's going on
13 and is highly relevant, Your Honor. This gentleman
14 has brought three criminal proceedings in France. In
15 France you can do it two ways, you can either go to
16 the prosecutor as you would here and ask them to
17 investigate -- please.

18 THE COURT: When you gentleman, which
19 gentleman?

20 MR. ZAUDERER: Plaintiff.

21 THE COURT: Which one?

22 MR. ZAUDERER: Sillam. Sillam, Mr. Sillam,
23 okay, he's gone and twice he was turned down by the
24 prosecutors there. And then he brought a third
25 proceeding which you can do in France, anybody can

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2 prosecute a criminal case, and I went there and I sat
3 there incognito and I saw such allegations that were
4 being considered such as a settlement, a civil
5 settlement that Sillam had made here in a prior
6 proceeding with the defendants was a crime, okay, absurd,
7 absurd contentions. And I found out from, because Labaton
8 was being investigated at the behest of Mr. Sillam, the
9 French police revealed to us that this is a gentleman who
10 has been serially investigated for multiple serious crimes,
11 that is Mr. Sillam.

12 THE COURT: When you say this is a gentleman --

13 MR. ZAUDERER: Sillam, Mr. Sillam.

14 THE COURT: Okay.

15 MR. ZAUDERER: Okay, plaintiff Sillam. According
16 to the police, and I have the translation, and this is going
17 to be relevant to the deposition because I'm going to be
18 asking him about all this and we're going to have a brouhaha
19 and somebody sitting in Europe who is overseeing this
20 deposition isn't going to have the slightest idea what the
21 Rules of Evidence are in a proceeding in the Southern
22 District of New York or how prior criminal --

23 THE COURT: How much do the rules -- oh, okay, so
24 you're talking about Rules of Evidence for criminal
25 proceedings in New York?

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MR. ZAUDERER: No, the civil, we're in a civil
3 case here --

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THE COURT: Why do the Rules of Evidence matter in
5 a deposition?

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MR. ZAUDERER: Because I'm going to use it at
7 trial in the Southern District. This deposition will be used
8 in the Southern District, that's why, Your Honor.

9

THE COURT: Right --

10

MR. ZAUDERER: Okay.

11

THE COURT: So why, so, okay, this gets back
12 to the question I asked at the beginning then, why can
13 you not get questions and answers under oath that you
14 could use in a civil proceeding --

15

MR. ZAUDERER: Right, I'm going to answer your
16 question, Your Honor, what if the lawyer says I direct
17 the witness not to answer, it's improper, criminal,
18 whatever, and now we have somebody, a supervisor who
19 is not going to know what to do, who knows what that
20 person will do. It's now, we're there and it's ten
21 o'clock in the morning, this is going to start up, and
22 now it's four o'clock in the morning here. I don't
23 know what Your Honor's practices are, I'm certainly
24 not going to call chambers at 4 a.m. and, if not,
25 we're going to be stuck over there until we get a

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2 ruling, that's what is going to happen.

3 THE COURT: Or you could bring it to the Part
4 1 judge and take your chances there.

5 MR. ZAUDERER: At 4 a.m., how do I do that?

6 THE COURT: Yes, you know what, what happens
7 when there's -- what happens when there's fights?

8 You're a very experienced litigator, Mr. Zauderer.

9 MR. ZAUDERER: Yes.

10 THE COURT: What happens when there are fights
11 in another time zone and there are deposition issue,
12 what do you do? I've always told people when I was a
13 practitioner, I tell people now, you make your record
14 and you move on. I want to get more granular, okay --

15 MR. ZAUDERER: I'm getting there.

16 THE COURT: This hypothetical, yes, it could
17 happen, but what are the bases where, one, a lawyer
18 can direct a witness not to answer? Are they
19 different in the United States versus France? Can they
20 be asserted differently, what does that mean, or does that
21 just stage the question to an issue of sanctions, an issue
22 to compel at additional deposition? You may have to show
23 that, you know, you weren't able to get what you were able
24 to get and maybe there will be costs assessed. But those
25 are all issues that may come up but they may not come up,

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2 but the parties are very much aware that the Federal Civil
3 Discovery Rules allow apportionment of costs,
4 apportionment and potentially sanctions if the parties
5 don't work together in good faith to complete --

6 MR. ZAUDERER: May I respond?

7 THE COURT: Yes.

8 MR. ZAUDERER: Thank you. May I respond to
9 that, thank you. My response, Your Honor, is we can
10 avoid all that if we're here. If we're here in the
11 Southern District in Manhattan during normal business
12 hours and if there has to be delay, you know, we just
13 go home. Mr. Sillam has taken, one person has come
14 here and taken an airplane and stayed in a nice hotel.
15 And it will either get resolved that day or another
16 day, we don't have to deal with do we hang around in
17 France, do we come back, do we go over again and spend
18 money and time over there. There's just simply in my
19 view, respectfully, no reason for that. You avoid all
20 these problems. I cannot understand, Your Honor, why
21 one should even question the preference of a
22 deposition being taken in France rather than here
23 where the --

24 THE COURT: Mr. Zauderer, I'm going to cut you
25 off right now.

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2 MR. ZAUDERER: Sure.

3 THE COURT: I told you at the outset why.

4 MR. ZAUDERER: Right.

5 THE COURT: You acknowledge that this is a
6 discretionary determination.

7 MR. ZAUDERER: I do. I do.

8 THE COURT: Right? I will tell you that when
9 I was a practitioner I conducted multiday depositions
10 in Paris of French nationals. We were able to work it
11 out, and I'm trying to understand why you're not able
12 to work it out, okay. I get that you would prefer, and
13 it would be cheaper for you to have the deposition in
14 New York. I have not ruled out that that is what I
15 may order ultimately, but I want to explore why we are
16 fighting so hard on this and --

17 MR. ZAUDERER: Okay.

18 THE COURT: Because you are saying it's not
19 possible. And what I'm hearing here is it would be
20 expensive, it would be inconvenient and, you know
21 what, I'm going to tell you that it would be extremely
22 inconvenient given what I'm hearing from what
23 plaintiffs are saying about having to come to New
24 York, that they don't have passports, do you really
25 want to be pushing out the deadlines waiting for them

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2 to get their passports if, indeed, they are ordered to
3 appear in New York for a deposition? Do you want to
4 have those fights? I'm trying to understand which is
5 going to be the most cost effective just in speedy
6 resolution.

7 MR. ZAUDERER: Okay. May I, excuse my
8 enthusiasm, Your Honor, there's another reason, okay.
9 This plaintiff has felt free to bring criminal
10 proceedings --

11 THE COURT: Okay.

12 MR. ZAUDERER: Okay, that's my concern. And I,
13 as I say, I went there incognito in court --

14 THE COURT: Okay, let me, can we table that
15 again?

16 MR. ZAUDERER: Sure.

17 THE COURT: What I saw in multiple filings was
18 we can't do a deposition under the Federal Rules, the
19 Hague Convention would apply. Why, you can do this
20 under a commissioner, you can agree to certain rules
21 of the deposition, I still am not hearing specifically
22 why taking a deposition of a French national in France
23 under the Hague Convention is so impossible, okay? I
24 will set aside, let's just put the blocking statute
25 issue on hold, I have questions about that as well

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2 because that also came up in my past experience and
3 somehow we were able to work it out, okay, but let me
4 hear about the whole, the Federal Rules versus Hague
5 Convention and why it's not possible?

6 MR. ZAUDERER: I do not say it is not
7 possible, I do not make that contention.

8 THE COURT: Okay.

9 MR. ZAUDERER: I want to be clear and forgive
10 me if I didn't make that clear. I am not arguing it's
11 not possible. What I am saying, if I can talk about
12 the blocking statute, is this plaintiff over whom
13 counsel here have no control has filed a criminal
14 proceeding, he has been charged criminally, himself,
15 multiple times, including possession of a firearm,
16 fraud, I have the record here of six, five or six
17 instances where he's been investigated and charged by
18 the police. He, there is nothing that would restrain
19 him after I take a deposition in France from filing a
20 criminal proceeding claiming whatever he wants to, as
21 he's done with Labaton, and responsible lawyers there.
22 He's filed a criminal proceeding over there and he'll
23 do it with me. And you and I may say well that's
24 frivolous, but I have to defend it. I have to hire
25 French lawyers. He can bring a criminal proceeding and

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2 there is a record here, that's my concern. I'm not
3 arguing that we couldn't do a deposition with all the
4 costs and all that, if I haven't been clear, I
5 apologize.

6 THE COURT: Okay, how does the -- so the
7 concern as you're articulating it now --

8 MR. ZAUDERER: Yes.

9 THE COURT: Is if you were to go to Paris to
10 take the deposition you don't have any assurances that
11 you're not going to be subjected to a frivolous, some
12 sort of proceeding in France on the basis of what you
13 are, the fact of taking the deposition.

14 MR. ZAUDERER: Yes, Your Honor.

15 THE COURT: I see Mr. Reda shaking his head,
16 talk to me about this. And, you know, I have to tell
17 you, this is something that is unique to this case
18 that does concern me and it's sort of outside of the
19 law, okay, this really does, this is one of the
20 practical concerns that I'm hearing. So go ahead, Mr.
21 Reda.

22 MR. REDA: Well, Judge, I would just I guess
23 start by saying that I came here thinking this was
24 really their motion to reargue or renew, yet there's
25 no new facts, they certainly couldn't argue and did

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2 not argue that the Court misapplied the law, the law
3 is crystal clear in this area, there is really no gray
4 area, and they haven't done anything but put forth the
5 same old arguments except now they now want to say,
6 almost like defame my client with all these
7 allegations that they didn't bring up in their papers,
8 I don't know what they're talking about, but my
9 clients have, and we stated it in our papers that they
10 are willing to sign affidavits stating that they will
11 not do anything in regards to these lawyers pertaining
12 to the depositions that occur in France.

13 And they can draft the affidavits however they
14 want to proceed with this, but our clients, and the
15 reason we're here, given, you know, have offered to
16 the Court that they are medically unable to travel.
17 The man has not traveled since 2018 to the United
18 States, that's five years, and his doctor has said that at
19 this point he shouldn't be traveling because of his health
20 issues. The same with the other plaintiff. And we have
21 said if the Court wants these documents or wants these
22 doctors' notes we'd be more than happy to supply them.

23 And understand, again, now he's saying he was in
24 France incognito. When he came to the Court and asked for
25 an adjournment of the last conference, he didn't say he

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2 was going to Court incognito, he said that he had a case
3 involving the exact same parties in France. And that was
4 months in advance, I mean this court date was months in
5 advance, they could have, if they had done anything in
6 this case since August or even the latest in November when
7 you ruled that they couldn't, they hadn't come here, they
8 had to do it in France or remotely -- or remotely in your
9 original order you, this motion here is a motion to
10 reargue your original decision which stated that the
11 deposition should either be in France or remotely as our
12 clients are in France. They are now trying to get you to
13 change your mind but they haven't given you any new
14 information, either law or facts, that would warrant you
15 changing your original order.

16 And what I find more, I guess troublesome, is
17 that since, we've been doing this since August, they've
18 made no attempt to go through the Hague convention. I mean
19 not at all, and yet in their papers they argue it's going
20 to take too long. Well, you know what, it wouldn't have
21 taken too long if they did it when they were supposed to.
22 In fact, if they had done it in a timely fashion when he
23 was in France, we could have done the depositions then, we
24 all could have gone there. He was there, clients were
25 there, could have done it then, but he didn't.

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2 And the law is very clear, in fact, our Courts,
3 the Federal Courts have ruled that the deposition on
4 notice in exact facts like this case, which is people that
5 voluntarily want to be deposed, there's no national French
6 interest, there's no interest by the French government in
7 this case, all of the things the Third Circuit Court of
8 appeals has talked about in why the Hague convention is
9 just one method and maybe not the best method. Only they,
10 Congress had indicated that you should use the Hague if
11 the party doesn't want to be deposed, he has to be forced
12 to be deposed, you'll have to go through the Hague. Our
13 clients have voluntarily said they want to be deposed in
14 France, they've said they'll sign affidavits saying that
15 they won't pursue any action and this, we could have been
16 done with this already. He was in France, we could have
17 gone to France, I just don't understand that they keep
18 doing the same thing yet they've done nothing to move this
19 forward as far as the Hague convention is concerned, not
20 that they need to, because depositions on notice would be
21 the preferred way to go.

22 And this whole thing about when we get there,
23 when we're there on notice, the Federal Rules of Civil
24 Procedure apply. We don't need a French lawyer there to
25 interpret the Federal Rules, we all know the Federal

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2 Rules, that's what's going to apply to these witnesses.
3 And as the Court pointed out, if our clients somehow take
4 advantage of this and don't answer questions, there are
5 sanctions that the Court can impose, like dismissing their
6 complaint because the Federal Rules allow for that. so
7 I don't think we have to worry about what the French
8 law says, what French lawyers are going to say,
9 because there will really be no reason for French
10 lawyers to be there. We're conducting a deposition in
11 France or remotely based on the Federal Rules of Civil
12 Procedure as they apply to this case.

13 MR. ZAUDERER: May I -- oh, sorry, may I
14 reply, Your Honor?

15 MR. REDA: And I also just wanted out to the
16 Court --

17 THE COURT: I just want to let Mr. Reda
18 finish.

19 MR. REDA: (continuing) -- that not only was
20 this motion improper but they violated all the Court
21 rules, 6.3 says you're not allowed to attach
22 affidavits to their papers. So instead, what, they
23 call them declarations, I mean is that a way that you
24 get around it? And, again, no new evidence, no new
25 facts, just the same old argument that, well, they

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2 should be here because they sued here. But I think
3 we've established reasonable cause to understand why
4 they can't come here now, it's a medical issue.

5 And what's more I think interesting is that
6 they've already told us that one of their witnesses,
7 one of their lawyers, has medical issues and they want
8 us depose him virtually, which we said we would do. So
9 it's all right for their witness to be deposed
10 virtually, but our witnesses have to be in person in
11 New York. It just boggles my mind that we're still
12 arguing something and yet they've done nothing at all
13 to move this forward. We could have been done with
14 this already and we haven't even started.

15 MR. ZAUDERER: May I reply?

16 THE COURT: Sure.

17 MR. ZAUDERER: Thank you. Look, first of all,
18 we have supplied an affidavit from French counsel on
19 the issue of the undertaking not to bring a criminal
20 proceeding that's been proffered here. And the
21 affidavit states as a matter of French law that it's
22 irrelevant, it's ineffective, you cannot promise with
23 legal effect not to bring a criminal action based on
24 something in the future. I mean that's been
25 uncontroverted here, that's number one.

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2 The second, I would like to just briefly --

3 THE COURT: Well what about, what about the
4 teeth that we have here with sanctions, apportionment

5 --

6 MR. ZAUDERER: You know, you can bring all the
7 sanctions you wish here, one can, that's not going to
8 stop me having to respond to a criminal proceeding in
9 France, okay, by Mr. Sillam. It just won't.

10 THE COURT: Unless, unless, for example, the
11 party were directed to pay costs for having to defend
12 the proceeding, right?

13 MR. ZAUDERER: This is a person who's been
14 investigated for criminal behavior six times and he's
15 in France. He is not, and even if this case is
16 dismissed here he is not going to forego bringing a
17 criminal charge against me for anything he can
18 superficially argue, okay, that's what I face as
19 counsel and going over there. I don't want to be
20 exposed to that.

21 THE COURT: Yet you have representations from
22 an officer of the court here that he's not going to
23 let his client do that.

24 MR. ZAUDERER: He can't control his client.
25 Why, I'm not going to assume that. He would come

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2 here, say, look, I told him he can't do it, I'll make
3 a representation, what's it worth?

4 THE COURT: Really? So your suggestion is that
5 as an officer of the court Mr. Reda would not be able
6 to control his client, but he apparently doesn't know
7 that so he's willing to put his own integrity and
8 reputation out there and potentially face sanctions if
9 it comes, if it turns out that that's not, that's not
10 appropriate, that's not possible?

11 MR. ZAUDERER: I can't speak for him under
12 what circumstances he would make that representation,
13 whether he will or he won't, but either way it does
14 not protect us from Mr. Sillam, okay? He may in good
15 faith speak to his client and say I won't bring it and
16 then he makes that representation and Mr. Sillam does
17 it, what's that worth? He said, Judge, I made that in
18 good faith, he probably would, I don't doubt it, that
19 has no meaning or effect.

20 I'd like to also address the procedural issue
21 if it's of any concern or consequence. I just want to
22 remind the Court that the original determination of
23 the place of deposition was not on a formal noticed
24 motion that was briefed, it was an oral discussion at
25 an conference following a joint submission concerning

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2 the positions.

3 THE COURT: And the text of my order, so I
4 don't want to -- I, there is enough going on in this
5 case and the related issues, and the disputes between
6 your clients that aren't even before this Court for me
7 to get bogged down in parsing out procedure and what I
8 meant in my prior order, but my prior order directed
9 you all to meet and confer. I do not get the sense
10 that there's been a whole lot of meeting and
11 conferring going on here.

12 MR. ZAUDERER: We did confer, my colleagues
13 continually confer, I think that's accurate.

14 ATTORNEY: Yes, we met and conferred
15 extensively, unfortunately we just can't agree.

16 MR. ZAUDERER: Yeah, this is sometimes where
17 people have to agree to disagree, we're all aware of
18 the obligation and the utility of conferring, and
19 we've done that, but sometimes people agree to
20 disagree and their clients are in sharp contrast with
21 each other.

22 MR. REDA: If I may, Judge?

23 THE COURT: Go ahead.

24 MR. REDA: I'd also, again, these, this
25 declaration from a French lawyer, improper, shouldn't

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2 have been even allowed to be submitted on the docket

3 --

4 THE COURT: Okay, go ahead, move onto the next
5 issue.

6 MR. REDA: But in all of this extraneous stuff
7 about my clients, I mean that they never brought up to
8 the Court before, now all of a sudden he's got all
9 these things, he's this horrible person, he's going to
10 have them arrested, I mean I don't know what to say to
11 it because I don't know if any of that is true. All I
12 know is that he was there in France I guess last week,
13 he didn't get arrested, he came back, so I guess there
14 wasn't any problem there. I don't know. It's just
15 nothing has changed other than the fact that my
16 clients are still ill, still can't travel under
17 doctors' orders and, as I said, we can do this and
18 fashion it in a way, I don't know why we can't do it
19 remotely. Then they don't have to worry about being
20 arrested and all that stuff that they're making up.
21 You know, nothing's happened, I don't know what to
22 tell them about my client has assured me that they
23 would sign affidavits. One of the clients is a lawyer
24 in France, he would be -- everyone is willing to sign
25 whatever they need, they feel to be protected, but if

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2 they're so afraid of going to France, not that it
3 stopped them from going last week, perhaps maybe we
4 should do it remotely which could be easily done. It's
5 not like we're asking them just because we don't want
6 to come, you know, they don't want to come, there are
7 valid medical reasons that preclude them from
8 traveling at this time.

9

THE COURT: Okay --

10

MR. ZAUDERER: May I address -- sorry.

11

THE COURT: No. Mr. Reda, sometimes if it
12 looks like you're winning an argument, you don't need
13 to keep talking.

14

MR. REDA: Yes, Judge.

15

THE COURT: All right, one thing, I want to
16 move forward on this, all right? You, Mr. Reda, you
17 represented that there are medical, real, valid
18 medical issues that preclude your clients from
19 traveling for a deposition. You've represented that
20 you can provide a doctor's note but you have not yet.

21

MR. REDA: Only because the, in our papers,
22 even in our first submissions we asked the Court if
23 they wanted them we would --

24

THE COURT: Right, I know.

25

MR. REDA: And since you didn't ask for them,

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2 we didn't give them to you. But we can give them to
3 you at any time, Judge.

4 THE COURT: More, more concerning to me is,
5 and also, since we're on the record I don't want to
6 get into the details of your client's medical
7 conditions or anything, but I wanted to know if those
8 medical issues and those reasons have been fully
9 disclosed to defense counsel while you've been talking
10 about whether or not the, you know, this is a good
11 enough reason, in other words.

12 MR. REDA: Yes, Judge, we've supplied them
13 with that documentation, we just didn't supply it to
14 the Court because the Court didn't say they wanted it.

15 THE COURT: Okay, I see defense counsel wants
16 to confer, so why don't you talk among yourselves for
17 a moment.

18 MR. ZAUDERER: Thank you.

19 THE COURT: Okay.

20 (PAUSE IN PROCEEDING)

21 MR. ZAUDERER: Your Honor, there were two
22 plaintiffs, as you know. With respect to the second
23 plaintiff, Mr. Saulnier, we've been given no proffer
24 of any medical issue or any medical condition,
25 whatsoever. We've been given his driver's license

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2 which shows his age which I believe was 79, mere age
3 without more is not probative at all of inability to
4 travel. With respect to Mr. Sillam, we've been given
5 an unsworn doctor's note from early September from a
6 general practitioner, very vague, conclusory, unsworn
7 post litigation. We've been telling the plaintiffs for
8 six months that this, we believe this is conclusory
9 and inadequate under this Court's case law and they've
10 given us nothing further.

11 MR. REDA: All I can say, Judge, is they have
12 never asked for any further documentation, we gave
13 them the doctor's note in French and then we had it
14 translated for them so that it would be in English
15 also. And as they're aware, he's got serious medical
16 issues, heart conditions, the doctor precludes him
17 from traveling. They keep bringing up that he traveled
18 in 2018, well that was five years ago, things change.

19 MR. ZAUDERER: If --

20 THE COURT: Okay, Mr. Reda, is it, is it your
21 position for both plaintiffs that there are medical
22 reasons, that there are medical reasons that they
23 should not be traveling?

24 MR. REDA: Yes.

25 THE COURT: Okay. I am -- all right, but it

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2 sounds like there's a dispute as to whether the
3 proffers that have been provided are sufficient, okay.
4 All right, who wanted to speak next, Mr. Zauderer, go
5 ahead.

6 MR. ZAUDERER: Yeah, just on one issue, kind
7 of the flourish was, the statement was made I went to
8 France, nothing happened, I didn't get arrested.

9 That's not what happens. Mr. Sillam here --

10 THE COURT: I don't care. I don't care,
11 that's not relevant here, okay?

12 MR. ZAUDERER: All right.

13 THE COURT: What I've heard articulated, a
14 concern that there will be criminal proceedings --

15 MR. ZAUDERER: Correct.

16 THE COURT: Unfairly brought that will cause
17 problems --

18 MR. ZAUDERER: Correct, Your Honor.

19 THE COURT: Significant problems, right --

20 MR. ZAUDERER: Yes, he just has to file them,
21 that's all he has to do.

22 THE COURT: Okay, let's, let's explore that
23 issue a little bit. I'm hearing from Mr. Reda that Mr.
24 Reda, as an officer of the court represent that he
25 will not, this his clients will not, will do no such

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2 thing, okay. What I'm hearing now is quite
3 speculative and I'm a little bit concerned at the tone
4 and the tenor of this argument, but what you're
5 saying, Mr. Zauderer is, also as an officer of the
6 court, Mr. Reda doesn't have control of his clients,
7 his clients are crazy and they're going to sue me
8 anyway.

9 MR. ZAUDERER: I think it's, I can't know
10 that. I can't know that.

11 THE COURT: Okay --

12 MR. ZAUDERER: Of course it's speculative.

13 THE COURT: But explain to me --

14 MR. ZAUDERER: Yes.

15 THE COURT: Explain to me why the Court does
16 not have the ability, this Court, why I --

17 MR. ZAUDERER: Yes.

18 THE COURT: And the District Judge on this
19 case, do not have the ability to fashion a proper
20 remedy or recourse if, in fact, it turns out that
21 these clients have done something that Mr. Reda
22 advised them not to do and which they, themselves,
23 have represented and promised not to do?

24 MR. ZAUDERER: Because in the real world, Your
25 Honor, I don't believe Mr. Sillam will care. I have

1 PROCEEDINGS 30
2 his criminal history, why would he care? The worst
3 that's going to happen is the Court would impose some
4 fine, perhaps dismiss his case, he's not here, he's
5 not American, he's in France, he can still file a
6 criminal proceeding over there, he can do anything he
7 wants.

8 So the answer, Your Honor, respectfully, is
9 the very important tools that this Court has would not
10 be effective if what I say is true and I think there
11 is a record here to suggest this is a real
12 possibility.

13 THE COURT: Not that I'm suggesting this, that
14 anybody consider this, but you did not mention, for
15 example, contempt sanctions?

16 MR. ZAUDERER: Again, I don't think, first of
17 all, I don't know whether we'd get that, but assuming
18 we were afforded that relief, what does it matter to
19 Mr. Sillam? He's French, he has no concern. He's
20 brought this case here to take a shot at it and he
21 keeps bringing criminal cases in France, and he keeps
22 being investigated, and if we can get, we've been told
23 this by the police there because Labaton was the
24 subject of his investigation so they released to us
25 his criminal history which is substantial.

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2 THE COURT: All right, you are not going to
3 mention Mr. Sillam's criminal history anymore, okay,
4 it's irrelevant at this point.

5 MR. ZAUDERER: Okay.

6 THE COURT: All right, talk to me about, is
7 there any other reason why you cannot conduct an in
8 person deposition in France? I've heard the, you know,
9 I'm going to be subject to potential criminal charges,
10 not because of the state of the law or because of the,
11 because of the French blocking statute or anything
12 like that but specifically because of these
13 plaintiffs. The argument is also made that these
14 plaintiffs' lawyers' representations are not
15 sufficient, that the plaintiffs, themselves, that the
16 representations by the plaintiffs, themselves, are not
17 sufficient. So that's one reason, right? And I guess
18 the other -- is that the primary reason, what are the
19 other reasons why you cannot do a deposition in
20 France?

21 MR. ZAUDERER: There is no reason other than
22 that that I cannot do it. I'm not saying it can't be
23 done and if I have made, I don't think I've argued
24 that, I'm not, Your Honor. I'm saying there are many
25 practical problems which I've discussed, I know Your

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2 Honor is fully aware of them because sometimes in the
3 real world, you know, the theoretical remedies for
4 things are really not practical and that's what I've
5 suggested. I won't repeat myself, I'll refer you to
6 what I've already argued, all about the time
7 differences, the practical problems with a busy Court,
8 can't be expected to address every problem right away
9 and even if it were 3,500 miles away in a different
10 time zone and perhaps having to stay there, it's
11 expensive, in my view there are, respectfully, no
12 justification.

13 And one other point, I think the only final
14 point, it's probably buried in our papers so it's not
15 new, is I would ask the Court to take into
16 consideration when you weigh all these factors, much
17 of our experience and perhaps Your Honor's experience
18 in practice, is with nonparty witnesses. And a lot of
19 the case law comes from that. And while it is not
20 determinative, we're talking about a party. Usually we
21 take nonparty witnesses in Europe, we have cases here,
22 the witnesses are all over, I've done a lot of this
23 over the years, I've really never seen a position
24 where, what's Mr. Sillam going to not come to trial
25 because he's too ill, he's going to rely on my

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2 deposition of him? I mean the reality, I mean that's
3 something to consider. I don't know the answer to
4 that. He claims he's too sick but he's bringing the
5 case here and three criminal cases in France and he's
6 going to come say I don't have to come trial and just
7 wait for that and maybe he can extract a settlement,
8 this is not going to happen. So that's my other point,
9 Your Honor.

10 MR. REDA: If I may respond, Judge?

11 THE COURT: Go ahead.

12 MR. REDA: Well first of all, the sanction of
13 you actually dismissing his case so outweighs any
14 allegation they might bring a criminal, a baseless
15 charge against this lawyer, I mean the plaintiffs have
16 spent so much money in legal fees and such to
17 prosecute this case, they think that it's worth a lot
18 of money, to think that they would intentionally,
19 knowing that the case could be dismissed and they
20 could be sanctioned by this Court even further because
21 they somehow have some vendetta against a lawyer
22 they've never met is so speculative and kind of silly.
23 Because I mean they want the case here, they want to
24 have the case adjudicated, they wouldn't do anything
25 so blatant that would cause this Court to dismiss

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2 their case as a sanction for violating an affidavit
3 they are willing to sign fashioned by either the Court
4 or by defense counsel that shows that they're not
5 going to do that. I mean and it keeps talking about
6 this, you know, if this wasn't in Court, you know,
7 this would be a defamation lawsuit, I mean every, I
8 mean you would think this man is a child molesting
9 murderer the way they keep talking about him, we
10 talked to the police about him, all this stuff.
11 There's no proof of it, there's nothing they gave to
12 the Court, nothing they gave to us, it's just kind of
13 trying impugning him by a broad stroke that he's not a
14 nice guy, yet the subject matter of this lawsuit is
15 that their clients defrauded them, lied and
16 misrepresented to them facts which is why we're to
17 begin with.

18 So if anyone has a history of
19 misrepresentation, of lying --

20 MR. ZAUDERER: Oh --

21 MR. REDA: (continuing) -- of doing the wrong
22 thing, it's not my clients, it's their clients.

23 MR. ZAUDERER: That's out of order.

24 THE COURT: Oh, my goodness, you're both out
25 of order. All right --

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MR. ZAUDERER: Respectfully, Judge, I,
apologies, I don't think I've said, made any argument
that's out of order, I apologize if I have.

5

THE COURT: You have continually referred to
the plaintiffs in this case in pejorative terms,
suggested that they won't listen to their lawyers,
suggested that they are willing to bring baseless and
frivolous lawsuits --

10

MR. ZAUDERER: Correct, I do, Your Honor.

11

THE COURT: And continued to push that point
even after I have told you not to keep doing it.

13

MR. ZAUDERER: Apologize if I've done that --

14

THE COURT: I have listened and I have heard
your concern. I agree that given some of the history
in this case, that it is not, that there is some there
there, that there is a non-zero possibility that this
might happen, but I have also listened carefully to
what Mr. Reda, who is also an officer of this court
and who represents these individuals, that they have
tendered or proffered affidavits or other assurances
that they will not do such a thing, and that I think
should reduce the possibility, even if it doesn't
reduce it to zero it reduces it to a number that is,
that may be acceptable considering the other recourse

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2 that you may have. Which admittedly would happen after
3 a bad event or a bad incident, but sometimes that's
4 what -- sometimes that's all we've got, right, that is
5 inherent in the definition of the word remedy, all
6 right. And we also have not yet covered whether a
7 remote deposition might alleviate that issue and bring
8 that possibility down to zero.

9 So let's talk about a remote or video
10 deposition.

11 MR. ZAUDERER: Sure.

12 THE COURT: I have heard already why there are
13 reasons that it would be impracticable, why it would a
14 hassle, why it would not be preferred. I share those
15 reasons, okay, I understand that, I want to hear if
16 there's anything else with regard to a remote or video
17 deposition that makes it not preferred, or less
18 preferred, or not possible.

19 MR. ZAUDERER: Sure, I hope this is
20 responsive. The only other point other than the things
21 that you've alluded to in the practicalities is the
22 point we've made in the papers that under the law as
23 we've put it out for Your Honor, whatever concerns
24 there are under the blocking statute exist whether the
25 deposition is in person or by, or is remote, that's

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2 our view that we've advanced to you and substantiated.

3 THE COURT: But I thought I heard Mr. Reda say
4 that the blocking statute really concerns national,
5 issues of national economic interest and normally do
6 not apply or would not be implicated if there were a
7 witness who was appearing voluntarily and under
8 agreement and for a private personal lawsuit.

9 MR. ZAUDERER: So, Your Honor, if I may ask
10 Mr. Matetsky to address it who can do so more
11 knowledgeably than I. Go ahead.

12 MR. MATETSKY: Very briefly, Your Honor, and
13 we've given you some case law on this. There are many
14 countries which although they are parties to the Hague
15 convention, take the position if you've got a
16 consensual deposition you're free to take it in our
17 territory, we don't express a national interest, we
18 don't -- we don't care.

19 THE COURT: And France is not one of them?

20 MR. MATETSKY: France is not one of those
21 countries. France, and we've given you the law on
22 this and we've given you, Mr. Tetley's declaration
23 takes the position that even if it's fully consensual,
24 if the deposition of a French national is taking place
25 on French territory, whether in person or remotely,

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2 you have to jump through the Hague convention hoops.

3 THE COURT: Okay, why not jump through the
4 Hague Convention hoops?

5 MR. MATETSKY: Because there's no assurance --
6 there are two ways that people can address that. One
7 is frankly to say even though we're supposed to go
8 through the Hague Convention we're just not going to
9 do it, everyone will turn a blind eye and we just
10 won't care.

11 THE COURT: Okay.

12 MR. MATETSKY: That might be tenable in
13 another case, given what we've heard earlier about
14 these particular plaintiffs we wouldn't feel
15 comfortable about that.

16 THE COURT: I'm not, I'm not even putting that
17 on the table.

18 MR. MATETSKY: Okay, the other --

19 THE COURT: So what's the not turning a blind
20 eye?

21 MR. MATETSKY: If we don't turn a blind eye
22 then we have to go through the Hague Convention as
23 pointed and as we've discussed, there is significant
24 potential delay there. There are two possible
25 alternatives, let's suppose, I gather Your Honor is

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2 familiar with the procedure, we go through the
3 Commissioner. In many cases there is a, there is a
4 deposition that takes place that runs smoothly but
5 that is not guaranteed to happen. We don't know who
6 the Commissioner is going to be, what the Commissioner
7 is going to do, what attitude the Commissioner is
8 going to take, how the Commissioner might react to the
9 different scenarios that might come up, there is no
10 assurance of a complete and full examination. And
11 given that as Mr. Zauderer pointed out we're not
12 talking about some peripheral nonparty, we're talking
13 about the plaintiffs in the action, there should be a
14 full, free, unfettered deposition under the American
15 rules is our submission.

16 THE COURT: So the problem here is there will
17 be delay, if you go through the Hague you have delay
18 and you have problems with a Commissioner, anything
19 else?

20 MR. MATETSKY: And that there is no assurance
21 that we'll have the full and free deposition that we'd
22 be able to have in New York.

23 THE COURT: You know what, there is no
24 assurance that anybody gets to have, that any
25 deposition will proceed fully, freely and fairly no

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2 matter where it's taken, no matter who's taking it,
3 okay, and there are remedies after the fact.

4 I want to go back to -- I want to go back to
5 your point about the Commissioner, Mr. Matetsky. So
6 you're suggesting that you would have no ability to
7 find or designate your own commissioner? I thought
8 that under the Hague there could be a judge or some
9 judicial officer or you could find your own
10 commissioner?

11 MR. MATETSKY: We could ask for that. We could
12 ask for that and Your Honor could ask for that, but
13 there is no guarantee that it would be granted.

14 THE COURT: There are no guarantees in life,
15 Mr. Matetsky. All right, Mr. Reda, do you have
16 something to say about this issue?

17 MR. REDA: Yeah, first of all, this issue has
18 been, was addressed really almost word for word by the
19 Federal District Court in Pennsylvania in which they
20 said --

21 THE COURT: Yes, which you cited in your, I'm
22 trying to look at, trying to find where it is in your
23 brief.

24 MR. REDA: Yeah, page 4, Judge.

25 THE COURT: Okay, this is the asbestos case?

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2 MR. REDA: Yes, product liability litigation
3 in the Eastern District of Pennsylvania --

4 THE COURT: Yep.

5 MR. REDA: Where the Court ruled all that "the
6 voluntary deposition of a plaintiff in this case poses
7 no threat to France's sovereignty or to France's
8 interest in its own legal procedures, the deposition
9 will not compel anyone's testimony, will burden or
10 inconvenience France or its Courts or citizens."
11 That's what we have here. And there is nothing to
12 indicate that we can't do this remotely. I mean could
13 it be, I'm not saying that it wouldn't be less
14 convenient, yes, it would be a little harder, but it's
15 not like it's asking you because, you know, they just
16 don't want to come. I think that there are valid
17 medical reasons for that, that's why we've been having
18 this conversation. If I had come here and said to the
19 Court, well, they just, you know, they just don't want
20 to come, well, too bad, they have to come. But that's
21 not what we have here, they don't have to go through
22 the Hague convention, in fact, our Federal Courts have
23 ruled consistently, not only the Second Circuit but
24 the Third Circuit, the Supreme Court, that the
25 preferred way of doing depositions is through notice

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2 and that you'd only go to the Hague Convention if you
3 think there's going to be a real problem with a
4 witness who is not voluntarily willing to be deposed.
5 That's not the case here.

6 So while they could have gone through the
7 Hague Convention, there was no need for them to do
8 that because our witnesses are voluntarily, and it's
9 not even they're nonparty witnesses, they are, they
10 are parties that have a great interest, you know, in
11 this proceeding, therefore, they have to be careful
12 about what they do that's going to affect the Court's,
13 you know, granting sanctions if they don't do -- if
14 they do something improper. This, the notice
15 requirement is really the way they should have gone
16 here, but if they wanted to go Hague they should have
17 done that, you know, months ago. I don't think there's
18 anything that makes it so insurmountable that we can't
19 do this deposition remotely, especially considering
20 that even before we got to this point they had already
21 stated they were videotaping the deposition. So I mean
22 I think they're protected many different ways to make
23 sure that this goes as smoothly as any deposition can
24 go.

25 THE COURT: All right, any response to that,

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2 defense counsel?

3 MR. ZAUDERER: Give us a moment, Your Honor.

4 THE COURT: Okay, thanks.

5 (PAUSE IN PROCEEDING)

6 MR. ZAUDERER: Your Honor, the case that Mr.
7 Reda cites, I believe, is a case in which the Court
8 said, you know what, everybody's in agreement, just
9 let's ignore the Hague Convention and just go take the
10 deposition and hope the French authorities don't find
11 out about it don't care. I believe that's the
12 alternative, the one alternative that your
13 specifically indicated a month ago --

14 THE COURT: So then go to the Hague
15 Convention. If you don't want to do it that way then
16 go through the Hague Convention, right, what's the
17 problem with that?

18 MR. ZAUDERER: Well I think we've indicated
19 what our concerns are about --

20 THE COURT: You might not get the commissioner
21 that you want? Why, you know what, there are plenty
22 of lawyers resident in France who are also barred in
23 this court, perhaps one of them might be an
24 appropriate commissioner for your deposition, if you
25 elect to conduct it by remote means, or I guess if you

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2 were to be there in person, I guess.

3 MR. ZAUDERER: Judge, respectfully, I've made
4 my arguments to you.

5 THE COURT: All right, I guess I'm just trying
6 to understand what the, that, I'm trying to understand
7 that, and I would like you to correct me if I'm wrong
8 here, but the issues, the video or remote deposition
9 would resolve completely the concerns, Mr. Zauderer,
10 that you would have with potential frivolous criminal
11 prosecutions.

12 MR. ZAUDERER: No --

13 THE COURT: No.

14 MR. ZAUDERER: It would not, Your Honor. No,
15 if my theory is correct and I've explained why, the
16 same concern whether you do something remotely or in
17 person in France.

18 MR. MATETSKY: France, and we've given Your
19 Honor a declaration and authority on this, France
20 takes the position that if the witness is sitting in
21 France it's a French deposition to which the French
22 procedural requirements apply regardless of where the
23 questioner is sitting.

24 MR. ZAUDERER: And I think you asked a
25 practical question and I'm trying to answer you as

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2 well, Your Honor, I think you asked about what
3 problems would that, and maybe we've covered this, I
4 apologize in advance if I have, but not only is it
5 expensive and difficult, but with the time difference,
6 I checked with French counsel, I have to have a
7 reporter, I have to have a videographer, I have to
8 have a translator. We're talking about 11:00 at night,
9 you can't easily get people to do that in France at
10 night, it just doesn't work that way in that system. I
11 can't just say, oh, call somebody, just get a
12 reporter, oh, what time do we start, what time do we
13 go to, well we go to 11:00 at night. It doesn't,
14 that's a practical problem, I hope that's responsive.

15 THE COURT: Oh, I see, that would be a
16 practical problem.

17 MR. ZAUDERER: Yes.

18 THE COURT: That perhaps could be alleviated
19 if the deposition were taken during business hours in
20 France.

21 MR. ZAUDERER: Yes, and I have to do it at 4
22 a.m.

23 THE COURT: With me taking no position whether
24 counsel is in New York or Paris, right?

25 MR. ZAUDERER: Right, I mean I'd have to get

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2 to the office at 2 a.m. after a full day, prepare, and
3 take a seven or eight hour deposition. You know, I'm
4 as old as the, one of these defendants here, my birthday
5 is tomorrow.

6 THE COURT: Happy early birthday.

7 MR. ZAUDERER: Thank you. One of the
8 plaintiffs, I should say.

9 THE COURT: Okay, just a minute. So, Mr.
10 Reda, you've tendered or you proffered some a sworn
11 affidavit or undertaking that your clients would not
12 pursue?

13 MR. REDA: Yeah, we put in our papers that
14 they would sign whatever affidavits that the, we told
15 them this, that they feel comfortable to protect them
16 that he would not be bringing, neither of them would
17 be bringing any criminal proceedings or any
18 proceedings, whatsoever, in France, in regards to the
19 deposition. They could even have sanctions built into
20 the affidavit if they violate that, I just don't, I
21 think the chances of it happening are so slim because
22 the ultimate sanction here would be you dismiss their
23 case and I think that --

24 THE COURT: There could be more than that.

25 MR. REDA: Yes, exactly, and that, in and of

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2 itself, would be enough to make sure that they never
3 do that because, you know, they put a lot of time,
4 energy and money into this case and, therefore, to
5 have some lawyer that they don't know somehow
6 frivolously arrested and risk the case being dismissed
7 and then being financially sanctioned, I think is
8 farfetched and the chances of that are slim to none.

9 THE COURT: Okay, any other -- all right.

10 MR. ZAUDERER: I think I've, I don't want to
11 repeat myself but I think I've made the point in
12 conclusion that I don't believe that the plaintiff,
13 based on the record which I've asserted I think
14 fairly, is trustworthy and will not be deterred in
15 France by anything that's done here. But I've made
16 that point, Your Honor, and I'd just repeat it.

17 THE COURT: And you've made it again.

18 MR. ZAUDERER: Thank you.

19 THE COURT: And you need not make it further.

20 MR. ZAUDERER: I'm sorry?

21 THE COURT: And you need not make it again.

22 MR. ZAUDERER: Very well, I'm guided by what
23 you say.

24 THE COURT: All right, although everything
25 that I had issued in this case concerning the

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2 plaintiffs' depositions were -- concerning the
3 plaintiffs' depositions was aimed to get the parties
4 and their counsel to find a mutually acceptable path
5 forward for depositions, I am concerned that counsel
6 in this case are unable to reach agreement on much of
7 anything. So as to Mr. Saulnier, if there are medical
8 reasons why, to be proffered as to why Mr. Saulnier
9 should not or cannot attend a deposition in New York
10 in person I direct you to provide them to counsel no
11 later than February 3rd. They are not to be filed on
12 the docket, they are not to be sent to chambers.

13 All right, and I expect that the lawyers
14 should meet and confer on a process and attempt one
15 last time to agree on a deposition process and
16 location for Mr. Saulnier after that has been, that
17 medical proffer has been provided.

18 MR. REDA: Yes, Your Honor.

19 THE COURT: Okay. As to Mr. Sillam, I
20 regretfully feel that we would not even resolve the
21 first issue of the, whether what Mr. Sillam has
22 already proffered constitutes good cause without
23 further evidentiary hearings and further discovery. I
24 do not think that is practical, or helpful or an
25 efficient way to resolve the issue of Mr. Sillam's

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2 deposition.

3 Accordingly, my ruling with regard to Mr.
4 Sillam's deposition is that defendants may elect
5 whether to conduct a deposition of Mr. Sillam remotely
6 or in person with Mr. Sillam in France. That is
7 defendants' election. The parties are to work together
8 in good faith to agree to the particulars and
9 logistics of the deposition, including but not limited
10 to providing affidavits or other statements or
11 agreements from Mr. Sillam to address the concerns
12 raised by defense counsel about frivolous proceedings
13 brought in France, or potential frivolous proceedings
14 brought in France. The Court takes no position on
15 whether defendants should proceed under the Hague
16 convention. That is at their election, I'm not going to rule
17 one way or the other.

18 I am going to caution counsel because you're the
19 ones that are here, that I expect you to behave and conduct
20 yourselves in the deposition and insure that your clients
21 also, to the extent that they're present, conduct themselves
22 appropriately. If there are motions to compel or motions to
23 continue the deposition or motions for sanction that arise
24 out of the deposition, they will be briefed, they will
25 include the full transcript as well as the video which can

1 PROCEEDINGS 50
2 be filed provisionally under seal, and if I need to decide a
3 motion I will apportion costs under 37(a)(5). I'm telling
4 you right now, all right, I will make this a loser pays
5 situation if there are further motions concerning Mr.
6 Sillam's deposition. I take to heart, I am concerned by the,
7 by what you have told me, Mr. Zauderer, about what Mr.
8 Sillam has done in the past about criminal proceedings, I am
9 listening to that, okay. Maybe I'm like Charlie Brown with
10 a football, but I have faith and hope that Mr. Reda and the
11 representations that he's made and the work that he has done
12 with his client will make that a nonissue, all right? If it
13 becomes an issue, I do want to hear about it, okay?

14 All right, the other thing that I wanted to
15 raise, I know that that was the only issue that you
16 all had raised, but we have been getting snail mail
17 from a lawyer in France concerning subpoenas served by
18 plaintiffs on Degroof Petercam Wealth Management, does
19 anybody have, can anybody tell me what these letters
20 are about? And I, we did have them put on the docket
21 and if you don't have copies my deputy can hand you
22 clean copies of what we received?

23 MR. ZAUDERER: I had seen something that was
24 filed on the docket just about twenty minutes before
25 Court so I obviously haven't had attention, a chance

1 PROCEEDINGS 51
2 to explore it thoroughly. But from our point of view,
3 these are, the plaintiffs gave us notice weeks ago
4 that they were planning to serve a bunch of document
5 subpoenas on financial institutions in France that
6 allegedly once had a relationship with Labaton. This
7 wasn't done under any valid procedure I'm aware of,
8 you can't just show up in France and start serving
9 American depositions so it's not surprising that some
10 of the nonparties have problems with that. I don't
11 know that those nonparties are actually before this
12 Court, but from our point of view that's what this is.

13 These are not documents that the, that the
14 plaintiffs actually need. Labaton has produced all of
15 its records relating to any income that it received
16 from these institutions during the relevant time
17 period, but plaintiffs, these are plaintiffs'
18 subpoenas so that's all I have to say.

19 THE COURT: Okay, are these, are these
20 subpoenas seeking documents or documents and
21 depositions?

22 MR. REDA: Just documents, Judge, and they,
23 and I told the lawyer, he said that they weren't going
24 to provide documents for a couple of reasons, but one
25 was that they don't have any, second of all, it's not

1 PROCEEDINGS 52

2 the right entity, and we said fine, end of discussion,
3 you don't have the documents, don't, you know, we're
4 not doing anything further. And for some reason, I
5 think this is the second time he's filed the same
6 letter to the Court explaining why he's not providing
7 documents that we're not, no longer asking him to
8 provide because he says he doesn't have them. And that
9 it's not the right entity and we should subpoena an
10 entity in the United States, not in France, fine. We
11 accepted his representations and I thought the matter was
12 completed because we're not doing anything further.

13 We did it properly through the way you're
14 supposed to serve subpoenas in France but he said that
15 they're not, you know, they're not complying and we
16 said fine, so don't comply. I don't know why he, that
17 wasn't good enough for the lawyer that he felt that he
18 had to let the Court know that he wasn't going to
19 comply, but I think now it's just a nonissue because
20 we're not going any further with it, as I told the
21 lawyer.

22 THE COURT: All right, I'm going to direct
23 that you file a joint status letter by February 17th.
24 The status letter will, will describe the status of
25 plaintiffs' depositions. In other words, you're going

1 PROCEEDINGS 53
2 to tell me what you decided to do with regard to Mr.
3 Sillam's deposition and also let me know if there are
4 any disputes coming up with Mr. Saulnier's deposition,
5 or if you're able to schedule it. I will give you a
6 little heads up, obviously not binding, it's not a
7 ruling, but if, if there is a dispute on Mr.
8 Saulnier's deposition, we're going to go through the
9 same discussion and the same articulation. So you can
10 save your clients a lot of expense by cutting to the
11 chase and exploring whether an in person deposition in
12 France, a remote deposition with the witness in France
13 or a deposition in New York, which of these is
14 possible or amenable. But I would hope not to have to
15 see this as a full blown motion again. If it is I'll
16 address it but I will address it with 37(a)(5), Rule
17 37(a)(5) in the back of my head.

18 And then the other item to be discussed
19 specifically in the joint status letter is whether,
20 whether there is a dispute about these third party
21 subpoenas, okay, or whether it's no longer an issue.
22 And then, of course, whether there are any new
23 disputes and if there is anything else that the Court
24 needs to address, all right?

25 So anything else that anybody needs to raise

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2 at this time, Mr. Reda?

3 MR. REDA: Not raise, is it possible to, I now
4 you said 2/3 for the medicals, is it possible to get a
5 couple of more days to get those only because he's in
6 France, I've got to, you know, make sure that, and
7 then once we get them I've got to have them translated
8 into English because no one here is going to be able
9 to read them in French and the doctor isn't going to
10 read them in French, but we'll have them translated
11 into English as we did with Mr. Sillam's medical.

12 THE COURT: All right, February 10th.

13 MR. REDA: Thank you, Judge.

14 MR. ZAUDERER: Nothing -- I'm sorry, nothing
15 on our side.

16 THE COURT: Okay. All right, thank you very
17 much. I had another question, I see a gentleman
18 sitting in the back, is he one of your lawyers?

19 MR. ZAUDERER: He's with Labaton, in-house
20 counsel.

21 THE COURT: Oh, okay. All right, what's your
22 name?

23 MR. MICHAEL KENT: Michael Kent, Your Honor.

24 THE COURT: Okay. You're welcome to sit at
25 counsel table, even if you're, you know, not speaking

1 PROCEEDINGS 55
2 or anything like that as the client. I have plenty of
3 cases where the clients, you know, if they choose to
4 attend a conference are welcome to come and sit at
5 counsel table.

6 MR. KENT: Thank you, Your Honor.

7 THE COURT: Okay? All right, thank you. All
8 right, so medical proffer for Mr. Saulnier, February
9 10th, joint status letter by February 17th to talk
10 about plaintiffs' depositions, whether any issue
11 remains with the third party subpoenas and also any
12 other disputes on the horizon.

13 All right, is there anything we need to do
14 about the discovery end date or is that still far
15 enough out that we can leave it?

16 MR. ZAUDERER: May I have a moment?

17 MR. REDA: I think, Judge, the only
18 outstanding discovery is the depositions. The
19 depositions. I believe all paper discovery has been
20 completed is my understanding.

21 THE COURT: Okay, what's the discovery end
22 date?

23 MR. REDA: Right now it's February 28th for
24 fact witnesses?

25 MR. ZAUDERER: Yeah, we're going to need an

1 PROCEEDINGS 56

2 extension if we go through these hoops.

3 THE COURT: Yes, so why don't you in the
4 February 17th letter also propose a new discovery end
5 date.

6 MR. ZAUDERER: Thank you, we will.

7 MR. REDA: Yes, Judge.

8 THE COURT: All right, the last thing is I'm
9 going to request the parties order a copy of the
10 transcript, share the cost 50/50.

11 MR. ZAUDERER: Sure.

12 THE COURT: All right, thank you very much, we
13 are adjourned.

14 (Whereupon the matter is adjourned.)

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C E R T I F I C A T E

4

5 I, Carole Ludwig, certify that the foregoing
6 transcript of proceedings in the case of Sillam, et al.
7 versus Labaton Sucharow LLP, Docket #21cv6675, was
8 prepared using digital transcription software and is a
9 true and accurate record of the proceedings.

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13 Signature _____

14 Carole Ludwig

15 Date: February 1, 2023

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